

**Discovery Organizational
Issues**

**ADMINISTRATIVE OFFICE OF THE U.S. COURTS
OFFICE OF DEFENDER SERVICES TRAINING BRANCH
Complex Litigation Seminar
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General Principles

- Create A Plan Before Starting
- Organize and Catalog Your Discovery
 - Prepare Chronologies
 - Prepare Players Files
 - Prepare Topic/Case Binders
- Tailor the Organization to the Specifics of the Case
- Client Centered
- Organization is Cyclical Process
- Use Technology (As Appropriate)

Questions to Ask - 1

- 1st Step: Analyze the case, the resources and the defense team to determine what organizational system to implement for the case. Determine the following:

**Type of case: Potential
Complex Criminal Cases**

- White Collar Fraud
 - Tax
 - Bankruptcy
- Multi-Count
- Multi-Event
- Multi-Defendant
 - RICO
 - Wiretap
- Habeas (Death and Non-Death)
- Death Penalty Trial

Questions to Ask - 2

- What type of case is it?
 - A fraud case and a DP case are both complex, but in different ways
- What is the expected size of the case?
- In what form will the discovery/information be in?
 - Documents
 - People
 - Electronic
- Location of the discovery/information
- Key issues/potential defenses
- What is the client's exposure in the case?

Questions to Ask - 3

- Team Members
 - Type of team members:
 - Attorneys, investigators, experts, consultants, etc.
 - Number of team members
 - Time to devote to the case
 - Funding
 - Computer skill levels of team members
 - Location of team members
 - Same or different offices?

Questions to Ask – 4

- Team Members (cont.)
 - How have the team members organized their cases previously?
 - What makes them comfortable?
 - What do they usually want/need
 - What are they open to or not

Questions to Ask - 5

- Determine generally what are people's strengths and weaknesses
 - Create a set-up which takes advantage of people's strengths and guards against their weaknesses
 - Be clear and upfront about each team members roles

Client Relations

- Establish a good relationship with the client
 - Be sensitive to the client's situation (especially if in jail)
 - Ensuring the client really understand what is going on
 - Know the client's history with the criminal justice system
- Building a good relationship with the client can help you in getting organized
 - Often the client will help you figure out what issues are important

Team Communication

- Frequent Regular Meetings
 - Helps to get things done
- Have an agenda
 - Concrete tasks to complete prior to each meeting
- Ensure that everybody is aware of what the rest of the team is doing
 - For example, the team should debrief after major interviews and/or consultations with experts

George Cheney Tasks List
Team: Daniel Blank, Frederick Anderson and Sam Dredrick.

#	Task	Person	Status
I. Pleadings and Legal Issues			
A.	Motion in Limine (Potential)		
I.	Motion to Exclude Gang Testimony	DB	Completed
II. Discovery to Request (General and Per Incident)			
A.	To Discover	DB/SB	To Do - 5/1/2005
III. Organization of Case			
A.	Document Index of Discovery		
I.	Prepare Document Index	SB	Complete (as of 3/31/2005)
B.	Prepare Case Binders		
I.	Prepare Relevant Players Files	SB	In Progress
a.	Edson		Done
b.	Green		To do - 4/1/2005
IV. Chronologies			
A.	Crime Chronology	SB	In Progress
I.	Edson Statements Crime Chronology	SB	Done
V. Investigation Tasks			
A.	Witness Investigation (Background)		
I.	Edson	FA	

Case Tools Manager v.1.0 1 February 4, 2005

Crime Scene

- Obtain/Prepare diagrams and/or maps of the crime scene
- Visit the crime scene(s) early in the process
 - It gives a context to the case, and can help tremendously in the organizational process
- Nothing like seeing things first-hand.

Organizing the Documents in the Case

- The key to handling a complex case is extreme organization
 - Implement a system, and follow it to a “T”
- Designate one person to be the individual in charge of the case organization
 - This will most often be a paralegal assigned to the case

Organizing the Documents in the Case

- Ensure that all team members know the organization procedures and are following the procedures
 - Especially with larger teams, it is helpful to have the case organization procedures documented
 - This way if the person in charge of organizing the case is unavailable, people will follow the system correctly.

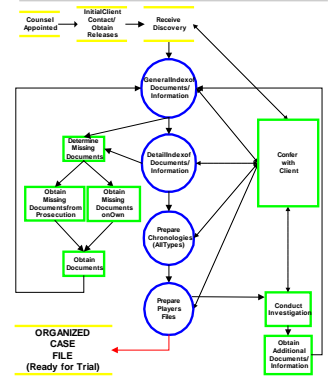
Organizing the Case – The Goal

- Test: The case is “in control” when you know where any document is at any time, and you can put your hands on it
 - In trial or in an evidentiary hearing, you must be able to put your hands on a document in seconds
- By being able to track all of your evidence, the stress of the case will lessen and the team will, as a whole, feel more in control

General Overview

- Prepare Index of Documents
 - General
 - Detail
- Prepare Chronologies
- Prepare Players Files
- Prepare Topic Binders or Files
- Utilize Database Computer Program(s)

Complex Cases - Getting Organized



Index of Boxes and Documents

- Discovery Log
 - Track all incoming discovery
 - Keep a folder with a copy of discovery cover letters
 - Have one individual responsible for tracking incoming discovery
- Prepare Index of Boxes
 - Broad overview of the contents
 - A simple index, not lots of detail
 - This broad index gives you a general sense of what information you have and what you do not have
 - From this broad understanding, you can determine which of the boxes you need to concentrate on first.

U.S. v. Arthur Miller
CR-00-0555 CRB

DISCOVERY LOG

Receipt Date	Bates	Description
1/5/2003	000001 - 001374	Documents. Agent Interviews. Client's Office Files.
2/18/2003	001375 - 003551	Documents, Video Tapes and Audio Tapes [NOTE: Bates pages 002001 and 003215 are missing]
4/10/2003	005552 - 008833	Documents and CD-ROMs
4/28/2003	008834 - 010928	Documents: Telephone records that were obtained during the investigation that were mentioned in the initial discovery letter.
5/2/2003	010929 - 020949	Documents: Documents in the possession of co-defendants and seized during search
6/1/2003	020950 - 041456	Documents: Documents in the possession of co-defendants and seized during search
7/9/2003	041457 - 041465	Documents, Audio and Video Files
7/11/2003	041466 - 041477	Documents and CD-ROMs. Additional FBI 302 reports
	041478 - 041535	MISSING
8/8/2003	041536 - 051606	Documents: 404(b) materials
8/10/2003	051539 - 051643	Documents: "These pages are from the SEPD"

Ignacio Jones Box Index
(3/15/2002)

Box	General Content	Source
1.	Trial Transcript - Guilt	Court
2.	Trial Transcript - Guilt	Court
3.	Trial Transcript - Guilt	Court
4.	Trial Transcript - Penalty	Court
5.	Discovery (Bates 000001 - 0001000)	Trial Counsel (Prosecution)
6.	Discovery (Bates 001001 - 0002000)	Trial Counsel (Prosecution)
7.	Discovery (Bates 002001 - 0003000)	Trial Counsel (Prosecution)
8.	Discovery (Bates 003001 - 0004000)	Trial Counsel (Prosecution)
9.	Discovery (Bates 004001 - 0005000)	Trial Counsel (Prosecution)
10.	Discovery (Bates 005001 - 0006000)	Trial Counsel (Prosecution)
11.	Discovery (Bates 006001 - 0007000)	Trial Counsel (Prosecution)
12.	Discovery (Bates 007001 - 0008000)	Trial Counsel (Prosecution)
13.	Trial Counsel - Guilt Phase Pleadings	Trial Counsel
14.	Trial Counsel - Guilt Phase Work Product	Trial Counsel
15.	Trial Counsel - Guilt Phase Players Files	Trial Counsel
16.	Trial Counsel - Penalty Phase	Trial Counsel
17.	Trial Counsel - Experts (Criminalists, Jury Consultants, Mental Health Experts)	Trial Counsel
18.	Trial Counsel - Billing Files	Trial Counsel
19.	Investigator - Guilt Phase	TC Investigator
20.	Mitigation Specialists	TC Mitigation Specialists

Index of Documents

- Prepare index with key information to describe the documents
 - Date of Document & Activity
 - i.e. date report was written vs. date of interview
 - Title/Description
 - Attempt to have a description that distinguishes the document from other documents
 - Bates #

Index of Documents

- Other important factors that can also be tracked
 - Number of pages of the document
 - Location of Document(s)
 - Names Referenced (Players)
 - Source of Document
 - Where was the document obtained?
 - Where did the source of the document obtain the document?
 - Notes (Attorney, Team, etc.)
 - Evidence Type (Document, Audio tape, etc.)
 - Document Type (Report, Letter, etc.)

Index of Documents

- When preparing the document index, it is important to follow certain protocols to ensure consistent entries
 - This will make it easier for someone to find the information they want

Index of Documents

- Consistent Terminology
 - Determine up-front what terms are going to be used to describe people, items and issues
 - This will make it much easier to find the relevant information afterwards
 - For example, the murder weapon is not listed as a “gun”, “pistol”, or “Ruger”, but is described in one, consistent way

Index of Documents

- The protocols that I follow for writing document titles are the following (written in the order listed):
 - Document Date
 - Who wrote the document? (Author)
 - What type of document is it? (Report, Letter, Etc.)
 - To whom is the document addressed or who is being interviewed? (Recipient or Subject of Interview)
 - “re” (regarding)
 - A very short description of the subject of the document
 - Examples:
 - “Identification of Suspect”
 - “3/3/2003 Alex Jones Telephone Interview”
 - “Red Dodge Caravan”

Index of Documents

- The purpose of the description is to have concise information which gives a broad scope of what the document is or is about
- Examples of a complete document title
 - 3/2/1994 Jack Moore Report of 2/28/1994 Patricia Walters Interview re Blue Car
 - 2/4/2003 Ben Hong FBI 302 Report re 1/1/2003 Bank of America robbery

Index of Documents

- Prepare discovery binders
 - Bates number a “master copy” of the documents if not already done
 - Have one set (a master copy) of your discovery available for easy access and review
 - If you have a small player, less important BUT
 - Need to review everything
 - Do not accept government representation that you only have to look at a small segment of the discovery

Key Documents

- During your initial review:
 - Mark or identify in some way the key documents (“Hot Docs”) as you review the materials
 - This will help you focus on the important evidence in your case
- Balance the tension between thorough review vs. cyclical review
 - Until you have a full grasp on the case, information that did not initially appear important can suddenly become critical to your case

Index of Documents

- Determine all potential/relevant discovery that should be received
 - Review the discovery to ensure that you have received what you should
 - If information is missing, make a determination to either request the documents from the prosecution, or to have the defense team obtain it by themselves

Timelines and Chronologies

- What is a life chronology or timeline?
 - A chronology or timeline is simply the arrangement of events, dates, etc. in the order of occurrence.

Chronologies

- A chronology can help you identify the holes in your narrative that you will have to be able to explain
- A chronology can help you identify the holes in your organization of documents.
- It will help you determine what are the key points.
 - to investigate/obtain information and documents.
 - to determine which witnesses to testify, provide declarations, obtain photographs, etc.

Types of Chronologies

- Timelines are integral to all areas of a case.
 - Crime
 - Investigation of the Case
 - Chain of Custody of Evidence
 - Social History
 - Aggravation
 - School
 - Medical
 - Psychiatric/Psychological
 - Family/ Other Family Members
 - Relationships with Client

Types of Chronologies

- A comparison between two or more versions of events
 - For example, a review of events, side-by-side, showing each version of events and how they differ and why
 - Show inconsistencies in witnesses statements
- This can show that the prosecution's theory is not true.

Types of Chronologies

- Any important theme or tracking of "risk factors" or lack of "protective factors"
 - Social historians often will testify regarding the risk factors model of mitigation.
 - The timelines will assist in identifying and locating the evidence needed to substantiate the experts' opinions
- Examples of these types of timelines include the following:
 - Head injuries
 - Substance Abuse
 - Suicide Attempts
 - Lack of adults who care
 - Lack of structured environment

Types of Chronologies

- In post-conviction, it is useful to create a timeline regarding the trial process itself.
 - To have a sense of how the case developed
 - To see what information could have been presented but wasn't

Players Files

- Reviewing all the documents will identify all the individuals and institutions that are relevant in the case
 - Include companies and institutions, not just persons.

Players Files

- Document Index for each significant player
- Chronology for each significant player
 - These documents can assist the attorney in their direct or cross examination of witnesses

Players Files

- Physical preparation of players files
 - Select the manila file folders you will be using for the documents.
 - Review the discovery, and when you come across a name, photocopy the page
 - Ensure that you photocopy the entire report that the player wrote
 - If the person's name is mentioned in someone else's report, you should copy the whole report if it is short.

Players Files

- If the report is long (more than 10 pages), then photocopy the pages needed to make sure the reference of where the name is found is complete (e.g., the page before or after may have pertinent information that relates to the player).
- The page(s) photocopied should identify
 - the date of the document;
 - the title of the document;
 - a short description of the contents of the document;
 - the author of the document; and
 - the agency producing the document.

Players Files

- In addition to the discovery, photocopy any declarations or prior testimony of the player
 - Print labels for the players files
 - Have clean copies of the documents.
 - Organize the documents within the players files in chronological order, starting from oldest document and ending with the most recent document.

Players Files

- Preparing for trial/evidentiary hearings
 - Consider having two copies of each document in the player file.
 - The equivalent of two (2) players files.
 - The first set or folder
 - All clean copies which can be presented to the witness during their testimony.
 - This set is available for counsel to use as an exhibit.
 - The second set or folder
 - The names will be highlighted so that the attorney can quickly find the information they want.
 - The attorney will use this set to mark to assist in their examination of the witness

After the Initial Organization of Discovery and Trial Counsel Files

- You can better:
 - Develop Potential Theories
 - Prepare an analysis of the prosecution case
 - Prepare an analysis of the potential defense strategies
 - How to rebut the prosecution case
 - How to affirmatively prove the defense case
 - Determine Investigative Tasks
 - Documents to Obtain
 - Witness Interviews
 - Prepare To-Do Lists
 - Keep copies of the old lists for future reference

Organization of Defense Obtained Materials

- Develop a system to track incoming information
- Document Status Report
 - Example:
 - Client's Social History Document List

John Johnson Personal Social History Document Index (3/15/2002)			
Document	Document Location	Source	Res. Status
I. Statistical Documents			
1. 7/16/1968 Birth Certificate	T.C. Box 9, Bates 007330	Source Unknown	
2. Social Security Card (564-92-9604)	No Documents		Request
3. Marriage Certificate [§§1990]	No Documents		Request
4. Divorce Records (Case name & number) [§1992]	No Documents		Request
II. Religion Documents			
A. Southern Baptist Missionary Church			
1. 6/1/74 Certificate of Baptism	T.C. Box 9, Bates 007265	Source Unknown	
III. School Documents			
A. Oak Street Elementary School [8/11/1973 - 6/1975]			
	T.C. Box 9, Bates 007264	Source Unknown	Obtained
B. Calvary Christian School [9/8/1975 - 6 th grade]			
	T.C. Box 9, Bates 007263	Source Unknown	Obtained
C. Hawthorne Christian School [1982 - 1983]			
	No Document From Institution		Requested - No Records
D. West Angeles Christian Academy [8 th grade]			
	No Document From Institution		Request
E. Hawthorne High School [1983 - 6/16/1984: 9 th grade]			
	No Document From Institution		Request

Defense Obtained Materials

- When you receive information from your investigation, prepare folders for each source from which you received materials
 - Organize the source folders in alphabetical order
 - Organize the documents in chronological order
- With voluminous cases, you may need to bates stamp the incoming information
 - Keeps the originals clean
 - Create a master copy version of the documents to use in the case files

Main Trial Binder

- Include in the main trial binder the primary case documents:
 - Charging Documents
 - Motions
 - Trial Memorandum
 - Jury Selection
 - Witness Lists
 - Exhibit Lists
 - Etc.

Topic Binders

- Prepare topic binders
 - Tailor the organization to the needs of the case
 - Organize by Event
 - Organize by Player
 - Organize by Agency

Topic Binders

- Topic Binders can also include the following
 - Police Reports
 - Forensic Reports
 - Aggravation
 - Mitigation
 - Risk Factors/Lack of Protective Factors
 - Media
 - Etc.

Players files (adding defense information/work product)

- In addition to the discovery materials obtained regarding players, the defense will add information to the file
 - Releases
 - Social History Documents
 - Other Criminal Records (especially important for informants)
 - Ensure to note in the file the source of the social history document
 - Defense Interview Reports
 - Proposed Direct or Cross Examination

Expert files

- Track information provided to the expert, since this will become discoverable to the prosecution
- C.V.
- Prior Court Testimony
- Relevant Scientific Research
- Legal Research (Daubert / Kelly-Frye)
- Proposed Direct or Cross Examination

Case testimony

- Motion Testimony
- Preliminary Hearing
- Trial (Ongoing)
 - All of the above testimony will be placed in the appropriate player file as the case develops

Essential Rules for Trial

- Ensure someone is charge of exhibits, players files, etc.
- Do not let people randomly pull documents
 - If they need a document, pull it, copy it, give them the copy, and put the original back in its proper place

Essential Rules for Trial

- Review with the defense team which documents, exhibits, demonstrative aids, etc. that are needed for each witness
 - It will make it much smoother when the examination takes place.
- Ensure you have enough copies of exhibits

Essential Rules for Trial

- At the end of the day, make sure you take the time to put things away properly
 - The urge will be to throw everything in together – don't
 - Take your time and put it away properly
- Immediately create folders for the new issues that develop during trial
- Spending a little time organizing at the end of the day (or the trial), will save lots of time in the end run.

Thank you

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